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## The Right to Life, the Convention on the Rights of Persons with Disabilities, and Abortion

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## Comment

# The Right to Life, the Convention on the Rights of Persons with Disabilities, and Abortion

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## I. INTRODUCTION

Though it may seem clear on its face, the phrase “right to life” cannot be easily defined as expressing a single viewpoint or ideology. Part of the difficulty in defining the phrase “right to life” is that the phrase is intertwined with the question of when life begins. A “right to life” lacks meaning if it is not clear at what point in life that right begins to apply. Likewise, an assumption that the meaning of the phrase “right to life” is clear invites miscommunication. Great care must be given when using the phrase “right to life,” especially in legislation. A simple misinterpretation of the phrase among lawmakers could fundamentally alter the extent to which abortion is permitted or not permitted under the law. When the provision being created is before a body as inclusive and diverse as the United Nations, determining the meaning of this phrase becomes particularly difficult, if not impossible. It is one such provision that this comment addresses.

The United Nations (“U.N.”) General Assembly adopted the Convention on the Rights of Persons with Disabilities (“CRPD”)<sup>1</sup> on December 13, 2006.<sup>2</sup> The CRPD became effective on May 3, 2008.<sup>3</sup> This comment focuses on Article 10 of the CRPD, Right to Life, which states, “States Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.”<sup>4</sup> Specifically, this comment aims to determine what meaning the CRPD

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1. Convention on the Rights of Persons with Disabilities, G.A. Res. 61/106, Annex I, U.N. Doc. A/RES/61/106/ (Jan. 24, 2007).

2. Convention on the Rights of Persons with Disabilities, <http://www.un.org/disabilities/default.asp?navid=12&pid=150> (last visited Feb. 8, 2009) [hereinafter *Convention Overview*].

3. Timeline of Events, <http://www.un.org/disabilities/default.asp?navid=23&pid=153> (last visited Feb. 7, 2009).

4. G.A. Res. 61/106, *supra* note 1, art. 10. Note that prior to the Seventh Session, the “right to life” article had been Article 8. See The Chairman, *Letter Dated 7 October 2005 from the Chairman to All Members of the Committee, delivered to the Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities*, U.N. Doc. A/AC.265/2006/1 (Oct. 14, 2005), available at <http://www.un.org/esa/socdev/enable/rights/documents/aac265-2006-1e.doc>.

gives the phrase “right to life” and how this definition might impact the permissibility of abortion in nations signing the CRPD.

Writing a “right to life” article requires a legislative body to consider at what stage of life that right should apply. Yet, there are few issues more controversial than defining when life begins. That the CRPD contains a “right to life” article suggests that U.N. delegates were able to agree, in at least some way, on defining when life begins. If this diverse group could reach agreement on such a complex issue, countries around the globe could potentially benefit from using the U.N.’s approach in domestic debates concerning abortion.

To determine whether the authors of the CRPD reached a consensus on a definition of when life begins, this comment provides an analysis of the full history of Article 10, Right to Life. To lay the groundwork for this analysis, the first section of this comment gives attention to three important pieces of background information. First, because the CRPD is a recent development, the background section provides an overview of the goals of the CRPD as a whole. Next, the background section briefly discusses the reception of Article 25 of the CRPD, Health,<sup>5</sup> which also relates to abortion. How Article 25 was received by parties involved with the CRPD provides an interesting point of comparison between two articles that relate to abortion but use different language. Finally, the background section examines how abortion is perceived in the disability rights community in the United States (“U.S.”), a recent CRPD signatory.<sup>6</sup> After the background section, this comment begins its analysis of Article 10, Right to Life, which continues until this comment’s conclusion.

## II. BACKGROUND

### A. *Background and History of the CRPD*

The CRPD is “the first comprehensive human rights treaty of the 21st century”<sup>7</sup> and aims to end the unequal treatment of all persons with

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5. See *id.* art. 25.

6. The United States signed the CRPD on July 30, 2009. Countries and Regional Integration Organizations, <http://www.un.org/disabilities/countries.asp?navid=12&pid=166#A> (last visited Nov. 8, 2009). See generally Tara J. Melish, *The UN Disability Convention: Historic Process, Strong Prospects, and Why the U.S. Should Ratify*, 14 No. 2 HUM. RTS. BRIEF 37 (2007) (giving an overview of the CRPD and arguing for U.S. ratification).

7. Convention Overview, *supra* note 2.

disabilities, a group estimated to include 650 million individuals.<sup>8</sup> The CRPD

marks a “paradigm shift” in attitudes and approaches to persons with disabilities. It takes to a new height the movement from viewing persons with disabilities as “objects” of charity, medical treatment and social protection towards viewing persons with disabilities as “subjects” with rights, who are capable of claiming those rights and making decisions for their lives based on their free and informed consent as well as being active members of society.<sup>9</sup>

The CRPD achieves equality by recognizing both the rights of persons with disabilities and the measures society can take in order to protect those rights.<sup>10</sup>

Mexico proposed the creation of a convention focused on the rights of persons with disabilities to the United Nations General Assembly in December 2001.<sup>11</sup> The General Assembly subsequently created an Ad Hoc Committee to begin work on the CRPD.<sup>12</sup> The first session of the Ad Hoc Committee met in August 2002, and the eighth and final session of the Committee met in August 2006,<sup>13</sup> “making [the CRPD] the fastest negotiated human rights treaty.”<sup>14</sup>

The CRPD is composed of fifty articles. Within the CRPD, “twenty-six substantive rights provisions address[], from a disability perspective, the full range of civil, cultural, economic, political, and social rights. . . .”<sup>15</sup> Among these articles concerning rights are, to name a few, Article 6, Women with Disabilities; Article 9, Accessibility; Article 16, Freedom from Exploitation, Violence and Abuse; and Article 28, Adequate Standard of Living and Social Protection.<sup>16</sup>

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8. Relationship Between Development and Human Rights, <http://www.un.org/disabilities/default.asp?id=33> (last visited Feb. 7, 2009). “If one includes the members of their families, there are approximately 2 billion persons who are directly affected by disability, representing almost a third of the world’s population.” *Id.*

9. Convention Overview, *supra* note 2.

10. Relationship Between Development and Human Rights, *supra* note 8.

11. Timeline of Events, *supra* note 3.

12. Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, <http://www.un.org/esa/socdev/enable/rights/adhoccomm.htm> (last visited Feb. 7, 2009) (quoting G.A. Res. 56/168, ¶ 12, U.N. Doc. A/RES/56/168 (Dec. 19, 2001)).

13. Timeline of Events, *supra* note 3.

14. Convention Overview, *supra* note 2.

15. Melish, *supra* note 6, at 43.

16. G.A. Res. 61/106, *supra* note 1.

*B. Abortion Elsewhere in the CRPD: Article 25*

Article 10 is not the only article of the CRPD that relates to the issue of abortion. Article 25's guarantee of equality in health care services includes services related to "sexual and reproductive health."<sup>17</sup> Though Article 25 does not provide any insight into defining the "right to life" by itself, the controversy surrounding its inclusion in the CRPD is informative of how some delegations perceive Article 10's "right to life" language.

When the CRPD was adopted by the General Assembly on December 13, 2006, thirteen delegations were compelled to speak on their interpretations of Article 25(a).<sup>18</sup> The interpretations of these thirteen delegations were nearly identical.<sup>19</sup> The views of the Marshall Islands are representative of the entire thirteen:

The Marshall Islands accepts the phrase "sexual and reproductive health" with the understanding that it does not include abortion and that its use in article 25(a) does not create any abortion rights, cannot be interpreted to constitute support for or endorsement or promotion of abortion and does not create, and would not constitute, recognition of any new international law, obligations or human rights.<sup>20</sup>

From this statement, it is quite clear that Article 25 drew significant attention from members and potential members of the CRPD. On the other hand, what seems notable about the General Assembly's adoption of the CRPD is how little attention, when contrasted with Article 25, Article 10 received. Considering the correlation between reproductive rights and the "right to life," how is it that Article 25 received so much attention, while Article 10, though receiving some attention,<sup>21</sup> hardly

17. *Id.* art. 25.

18. U.N. GAOR, 61st Sess., 76th plen. mtg., U.N. Doc. A/61/PV.76 (Dec. 13, 2006). The thirteen delegations included the Marshall Islands, Egypt, Peru, Iran, Honduras, Nicaragua, Libyan Arab Jamahiriya, the United States of America, Costa Rica, Uganda, the Philippines, El Salvador, and the Holy See. *Id.* See G.A. Res. 61/106, *supra* note 1, at art. 25(a).

19. U.N. Doc. A/61/PV.76, *supra* note 18.

20. *Id.* at 4.

21. At the CRPD adoption session, only two delegations spoke about Article 10 by name. U.N. Doc. A/61/PV.76, *supra* note 18. "The Marshall Islands understands that [A]rticle 10 guarantees the 'right to life' of disabled persons from the moment of conception and throughout their natural lives until natural death." *Id.* at 4. The Holy See was the second delegation, and it is discussed in the text. *Id.* at 23.

Additionally, three other delegations (the Philippines, Peru, and Costa Rica) mentioned the "right to life" but did not cite Article 10 in doing so. In discussing its interpretation of Article 25(a), Peru stated that its "Constitution recognizes the right to life from the moment of conception." *Id.* at 5. Likewise, Costa Rica stated, "[T]he reference in the Convention to the concept of sexual and reproductive health does not constitute a new human right or, still less, imply relativization or negation of the right to life, which we

garnered a peep? Is the meaning of the “right to life” now so clearly decided that it was a non-issue at the adoption of the CRPD?

It seems that some delegates would argue that the “right to life” is inherently “pro-life.”<sup>22</sup> Although several delegations brought up the “right to life” in conjunction with Article 25 during the adoption meeting, the address made by the Holy See, which represents the Vatican,<sup>23</sup> perhaps best shows how unblinkingly<sup>24</sup> delegations used the phrase “right to life” as a contrast to the possibility of permissible abortion under Article 25(a). The Holy See, in electing to not sign the CRPD because of Article 25(a), stated, “[W]e opposed the inclusion of such a phrase [(referring to Article 25(a))] in this article, because in some countries reproductive health services include abortion, thus denying the inherent right to life of every human being, as affirmed by [A]rticle 10 of the Convention.”<sup>25</sup> It is clear from the Holy See’s position that it reads Article 10 as conflicting with Article 25.

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regard as the source of all rights.” *Id.* at 11. In reference to Article 25, the Philippines remarked that “[it] is of the belief that the provision of health care and all other services should not in any way undermine the right to life of a person, with or without a disability, in all stages of his or her being.” *Id.* at 15. Although these three delegations did not cite to Article 10 directly, their comments about the “right to life” can be read fairly to concern Article 10.

22. The terms “pro-choice” and “pro-life” are put in quotation marks because to many people the terms are misnomers. Many people who are “pro-life” do not see abortion as a “choice” but consider it murder. On the other hand, people who are “pro-choice” do not consider themselves “anti-life.” “Pro-choice” advocates may see the “pro-life” position as a misnomer because “pro-life” advocates arguably care more about quantity of life than quality of life. Such an argument rests on the notion that forcing a pregnant woman to have a child by outlawing abortion gives greater weight to the birth of the child than to the mother’s life. “Pro-choice” advocates may also see the term “pro-life” as conflating the beginning of life with the beginning of personhood. Many “pro-choice” advocates believe that, while an abortion may terminate a life, life only becomes subject to moral worth when that life reaches personhood. What personhood entails differs between “pro-choice” advocates but generally entails a certain level of cognition. Of course, the arguments described here are not exhaustive of either “pro-choice” or “pro-life” advocates’ positions. For a polemical discussion of why the terms “pro-choice” and “pro-life” are misnomers, simply type either term into any internet search engine.

23. The Holy See is a non-member state permitted to observe the General Assembly. United Nations Member States, <http://www.un.org/members/nonmembers.shtml> (last visited Feb. 7, 2009). The Holy See represents the Vatican. See Holy See Mission to the United Nations, <http://www.holyseemission.org/> (last visited Feb. 7, 2009).

24. The term “unblinkingly” here means “without reservation.” The phrasing of the sentence and the use of “unblinkingly” is intentionally meant to invoke an incredulous tone, not out of reaction for the specific “pro-life” or “pro-choice” position being taken, but rather because it seems, in light of the great political baggage inherent in our society’s everyday understanding of the phrase “right to life,” uncanny to assume that the phrase “right to life” can have but one meaning, even if one believes that that is the only way the phrase *should* be defined.

25. U.N. Doc. A/61/PV.76, *supra* note 18, at 23. Despite several delegations’ interpretations of Article 25(a) as being consistent with their “pro-life” views (and the

C. *The “Pro-Choice” Disability Rights Advocate’s Dilemma*

When considering the CRPD, it is important to keep in mind the conflicting viewpoints of disability rights advocates on the issue of abortion. The United States is one CRPD signatory<sup>26</sup> where the different viewpoints of its citizens provide insight into the relationship between disability rights advocates and abortion.

In the U.S., disability rights advocates have a history of sharp disagreement on the issue of abortion rights.<sup>27</sup> Although disability rights advocates may be “pro-choice” or “pro-life” for reasons unrelated to disability rights, many disability rights advocates, regardless of their positions on abortion, also find that “pro-life” policies coincide with their view that abortions should not be used to discriminate against children who may be born with disabilities.<sup>28</sup> Many “pro-choice” disability rights advocates are concerned that abortion results in discrimination against persons with disabilities.<sup>29</sup>

The internal conflict of a “pro-choice” disability rights advocate is compounded by the issue of government paternalism.<sup>30</sup> Disability rights advocates oppose the stigmas that coincide with a government

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silence of every other delegation on the matter), the Holy See did not sign the CRPD because of the inclusion of Article 25(a). *Id.*

26. Countries and Regional Integration Organizations, *supra* note 6.

27. See Samuel R. Bagenstos, *Disability, Life, Death, and Choice*, 29 HARV. J.L. & GENDER 425 (2006) (reviewing, in the wake of the Theresa Schiavo case, some disability rights advocates’ support of a ban on assisted suicide and how this interacts with the same individuals’ “pro-choice” position); Steven A. Holmes, *Abortion Issue Divides Advocates for Disabled*, N.Y. TIMES, July 4, 1991, at A11 (looking at the relationship between the disability rights movement and “pro-choice” and “pro-life” groups); Robert Pear, *‘Baby Doe’ Advocates Are an Unlikely Team*, N.Y. TIMES, Feb. 19, 1984 (discussing the “uneasy alliance,” composed of “pro-life” and disability rights groups, against “Baby Doe” scenarios, in which infants with disabilities are allowed to die); Ronald Smothers, *Abortion Foes Seek Ties with Groups for Disabled*, N.Y. TIMES, June 9, 1991 (discussing the difficulties of the then potential joining of forces between the National Right to Life Committee and disability rights groups).

28. See sources cited *supra* note 27.

29. See Bagenstos, *supra* note 27, at 441 (“Adherents to the disability rights critique of prenatal testing do not oppose abortion generally; many of them strongly endorse a pro-choice position.”).

30. The term “government paternalism” arises in different contexts. Generally, critics of “government paternalism” use the term to describe the overreach of government into citizens’ everyday lives. For instance, entitlement programs like social security are often called “paternalistic” by critics who see such programs as restrictions on their ability to plan for themselves. Such critics would argue that taxes to pay for entitlement programs deny individuals the right to use the money they would have, if not for taxes, to make their own investments. Likewise, critics of government regulation, who see the free market as self-regulating, see government regulation of the financial sector as too constraining, too “paternalistic.” Though the term does not necessarily entail a negative connotation, it is often associated with one.



paternalism that encourages the view that persons with disabilities ought to be objects of pity.<sup>31</sup> Yet, some “pro-choice” disability rights advocates, who oppose abortion on grounds of discrimination against persons with disabilities, worry that their support of what could be considered “pro-life” positions could result in a ban on abortion, which they see as just a different type of paternalism—this time towards women.<sup>32</sup> Anyone familiar with platform politics can imagine the difficulty in trying to find a candidate who is simultaneously “pro-choice” and opposed to the use of abortion to selectively terminate children with disabilities. Regulation of such a position would be impossible. Nevertheless, these positions are important to keep in mind for anyone who advocates a certain position on abortion or disability rights, including potential signatories to the CRPD.

### III. LEGISLATIVE HISTORY: ARTICLE 10 AND ABORTION

In order to determine whether the “right to life” in Article 10 should be interpreted to mean “pro-life” or “pro-choice,” it is necessary to examine the legislative history of the Article. Not only will this analysis elucidate the meaning of “right to life” in the CRPD as it relates to the issue of abortion, but it should also provide insight into the complex

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31. See U.N. Doc. A/61/PV.76, *supra* note 18, at 2 (The Deputy Secretary-General stated, “Too often, those living with disabilities have been seen as objects of embarrassment and, at best, of condescending pity and charity.”); Convention Overview, *supra* note 2 (“[The CRPD] takes to a new height the movement from viewing persons with disabilities as ‘objects’ of charity . . . towards viewing persons with disabilities as ‘subjects’ with rights, who are capable of claiming those rights. . .”).

32. See Bagenstos, *supra* note 27.

It may be an uphill battle to convince today’s Court . . . that the imposition of unique burdens on the abortion choice reflects paternalism. Abortion rights activists will need, at the very least, to highlight the connections between the *specific* restriction a state has imposed on abortion—not the idea of imposing abortion restrictions in general—and the broader history of discrimination against and subordination of women.

*Id.* at 456 (emphasis in original).

Paternalism has been one of the most significant historical means of oppression and subordination for people with disabilities. The state and medical professionals have frequently denied people with disabilities the opportunity to make their own choices, based on the view that they are incapable of making wise choices on their own. [Regarding assisted suicide, i]t would be ironic if an effort to protect people with disabilities from the paternalism of doctors who encourage them to end their lives resulted in a regime that denies people with disabilities all choice, based on a conviction that they would inevitably succumb to the influence of others.

*Id.* at 460 (citation omitted).

Likewise, the argument could be made that, in advancing the disability rights cause, which is opposed to paternalism, “pro-choice” disability rights advocates could be advocating paternalism toward women seeking abortions. See sources cited *supra* note 27.

relationships between disability rights advocates and different factions of the abortion debate.

The CRPD negotiations took place during eight Ad Hoc Committee sessions, with a working group held between the second and third Ad Hoc Committee sessions.<sup>33</sup> Additional expert meetings and workshops were also held regionally for the purpose of preparing points of concern for the Ad Hoc Committee.<sup>34</sup> Here, the legislative, or negotiation, history of Article 10 is presented as it relates to the “right to life” and the issue of abortion.

#### A. *The Working Group*

The earliest use of the phrase “right to life” in the CRPD Negotiation Archive<sup>35</sup> occurred in a Second Session document from the Asia and Pacific regional expert group meeting on the CRPD in Bangkok, held during June 2-4, 2003:

The meeting also noted that the implications of some rights for persons were contentious. The example of the right to life and its implications for the use of genetic counseling, or rights of access to abortion was mentioned. It was recognized that a convention would not necessarily resolve debates over these contentious issues.<sup>36</sup>

This statement marks an early recognition of the complex and controversial nature of the “right to life” and, specifically, the abortion issue.

Following the Second Session of the Ad Hoc Committee, a Working Group on the CRPD was created and tasked with drafting the first version of the Convention.<sup>37</sup> The first draft contains the original

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33. Timeline of Events, *supra* note 3.

34. See, e.g., Documents of the Second Session, <http://www.un.org/esa/socdev/enable/rights/ahc2documents.htm> (last visited Feb. 8, 2009) (giving some examples of workshops and meetings outside the Ad Hoc Committee sessions).

35. CRPD Negotiation Archives, <http://www.un.org/disabilities/default.asp?navid=25&pid=1423> (last visited Feb. 2, 2009) (the online Negotiation Archives of the CRPD).

36. Asian and Pacific Regional Expert Group Meeting on an International Convention to Promote and Protect the Rights and Dignity of Persons with Disabilities, Bangkok, Thai., June 2-4, 2003, *Bangkok Recommendations on the Elaboration of a Comprehensive and Integral International Convention to Promote and Protect the Rights and Dignity of Persons with Disabilities*, ¶ 30, U.N. Doc. A/AC.265/2003/CRP/10, available at [http://www.un.org/esa/socdev/enable/rights/a\\_ac265\\_2003\\_crp10.htm](http://www.un.org/esa/socdev/enable/rights/a_ac265_2003_crp10.htm).

37. Working Group on a Convention, <http://www.un.org/esa/socdev/enable/rights/ahcwg.htm> (last visited Feb. 8, 2009).

The Group would take into account all previous contributions submitted to the Ad Hoc Committee by States, observers, regional meetings, relevant United Nations bodies, entities and agencies, regional commissions and intergovernmental organizations, as well as civil society including non-governmental organizations (NGOs), national disability and human rights

wording protecting the “right to life”: “States Parties reaffirm the inherent right to life of all persons with disabilities, and shall take all necessary measures to ensure its effective enjoyment by them.”<sup>38</sup> According to the daily summaries for the Working Group, various non-governmental organizations (“NGOs”) and governments raised concerns regarding the “right to life” and the article’s relationship to abortion.<sup>39</sup> One such concern, voiced by Inclusion International, urged the Working Group,

This is not an argument about a women’s [sic] right to choice, it is about “our right” to be born and to be to be [sic] different. The presence of a disability must not be allowed to become a justification for the termination of life, nor must a disability justify changing the genetic make-up of a person. A strong statement advocating the right to life for PWD[, persons with disabilities,] should recognize the richness and diversity that PWD bring to the lives of their family and community.<sup>40</sup>

Another NGO, the World Network of Users and Survivors of Psychiatry (“WNUSP”), stated that the “right to life” article should only be included if it does not limit women’s reproductive options.<sup>41</sup> However, far from being what is generally considered “pro-choice,” WNUSP stated that both (1) abortion supposedly justified by potential suffering and (2) abortion supposedly justified by parents unprepared for children with disabilities are “atrocities” that should be prevented as they devalue the lives of persons with disabilities.<sup>42</sup>

Within the European Union’s (“EU”) draft, Ireland, despite being a country sympathetic to protecting the unborn, acknowledged that “[w]ith respect to rights before birth, there is no consensus in the international

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institutions and independent experts. The decision also provided the composition of the Group which would include non-governmental organizations (NGOs), especially organizations of persons with disabilities and from all regions. The Working Group will have a ten day meeting from 5 to 16 January 2004 and will present the outcome of its work on a draft text to the Ad Hoc Committee at its third session.

*Id.* See U.N. GAOR, 58th Sess., Item 119(b) at 7, U.N. Doc. A/58/118 (July 3, 2003) (recording the establishment of a Working Group).

38. U.N. GAOR, Ad Hoc Comm. on a Comprehensive & Integral Int’l Convention on the Prot. & Promotion of the Rights & Dignity of Persons with Disabilities, Working Group, *Report of the Working Group to the Ad Hoc Committee*, 14, U.N. Doc. A/AC.265/2004/WG.1 (Jan. 27, 2004).

39. Working Group Article 8 Daily Summary, <http://www.un.org/esa/socdev/enable/rights/wgsuma8.htm> (last visited Feb. 8, 2009).

40. *Id.*

41. *Id.*

42. *Id.*

community.”<sup>43</sup> Rather, international law holds that birth is the point at which a fetus’s rights are established.<sup>44</sup> Therefore, Ireland joined the EU in not recognizing a “right to life” article in the convention.<sup>45</sup>

New Zealand sought to include the article but with language striking a middle ground between denying the right to choose and actively promoting abortion based on disability.<sup>46</sup> Sierra Leone agreed with New Zealand that this convention could provide an opportunity to at least provide states with some guidance on the “right to life” issue, even if that guidance stops short of advocating a particular position.<sup>47</sup> Serbia and Montenegro, concerned that controversy over a “right to life” article might result in fewer signatories, agreed with the EU that the article was not necessary, while adding that “there could be no moral justification for taking away the life of a PWD [person with a disability,] *which has been born*.”<sup>48</sup>

At the second meeting focusing on the “right to life,” held on January 15, 2004, the Working Group agreed on a draft and its corresponding footnotes indicating the controversial nature of the article. The Working Group presented the following draft to the Ad Hoc Committee, complete with footnotes:<sup>49</sup>

Draft Article 8

RIGHT TO LIFE<sup>(footnote 30)</sup>

States Parties reaffirm the inherent right to life of all persons with disabilities, and shall take all necessary measures to ensure its effective enjoyment by them.<sup>(footnote 31)</sup>

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43. *Id.*

44. Working Group Article 8 Daily Summary, *supra* note 39.

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.* (emphasis added).

49. Working Group Article 8 Daily Summary, *supra* note 39. “Sierra Leone called for the footnote to reflect both points of disagreement on this issue—the content of the right to life and whether there should be an article on the right to life in the convention at all.” *Id.*

## Footnotes:

30: There were different views expressed within the Working Group as to whether the Convention should include an article on the right to life, and if so, its content.

31: In the context of the discussion on this draft Article, some members of the Working Group suggested that the Convention should contain a separate draft article on the protection of the rights of persons with disabilities in armed conflict, similar to the approach taken in Article 38(4) of the Convention on the Rights of the Child. It was also suggested that such an article could deal more broadly with the protection of the rights of groups at particular risk.<sup>50</sup>

*B. Pre-Working Group Deliberations*

The “right to life” article that the Working Group represented at the official CRPD negotiations arose from the Chair’s preliminary draft.<sup>51</sup> In the Chair’s draft, the then Article 12, Right to Life stated, “Every person with disability has the inherent right to life and survival. This right shall be protected by law. No one shall be arbitrarily deprived of his or her life.”<sup>52</sup> This original wording gathers from documents submitted by various entities ahead of the Working Group session.<sup>53</sup>

During the Second Session of the Ad Hoc Committee, held prior to the Working Group meeting, several NGOs submitted concerns involving a “right to life.”<sup>54</sup> For one, the European Disability Forum stated, “Current developments in population demography, ethics and medical technology present increasing challenges to the right to life for disabled people. Prenatal diagnosis aiming to prevent the birth of

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50. Draft Article 8 Right to Life, <http://www.un.org/esa/socdev/enable/rights/ahcwgreporta8.htm> (last visited Feb. 8, 2009) (quoting U.N. Doc. A/AC.265/2004/WG.1, *supra* note 38, at 14). See Jurisprudence of Human Rights Treaty Bodies (Draft Article 8), <http://www.un.org/esa/socdev/enable/rights/wgjrefa8.htm> (last visited Nov. 10, 2009) (providing a list of additional human rights treaties consulted by the Ad Hoc Committee in drafting the “right to life” article). Because the legislative history of the CRPD provides little indication that any of these treaties significantly impacted the language and meaning of the “right to life” article, these treaties are not discussed at length in this comment.

51. Chair’s Draft Elements of a Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities (Dec. 2003), <http://www.un.org/esa/socdev/enable/rights/Chair%27s%20draft%20text.doc>.

52. *Id.*

53. *Id.*

54. NGO Contributions to the Elements of a Convention, [http://www.un.org/esa/socdev/enable/rights/a\\_ac265\\_2003\\_crp13\\_add1.htm](http://www.un.org/esa/socdev/enable/rights/a_ac265_2003_crp13_add1.htm) (last visited Feb. 8, 2009).

persons with disabilities and dangerous developments in the field of euthanasia, will require a special attention in the future UN Convention.”<sup>55</sup>

WNUSP, stated that “[e]very human being is a person. The status of personhood shall not be deprived on account of actual or perceived disability.”<sup>56</sup> WNUSP went on to say, “No person shall be deprived of the right to life or the right to reproductive choice on account of actual or perceived disability.”<sup>57</sup> The World Blind Union added that a “right to life” includes “[t]he prohibition of compulsory abortion at the instance of the State, based on the pre-natal diagnosis of a disability.”<sup>58</sup>

The Coalition of Individuals, Organisations and Agencies of the People, for the People and by the People with Disabilities in Eastern Europe (which represents over 100 organizations from Ukraine, Russia, Belarus, Moldova and Poland) urged that the new convention adopt the “right to life, liberty and security of person to any person with disabilities” as contained in the Universal Declaration of Human Rights.<sup>59</sup> New Zealand matched this concern in its own proposed draft.<sup>60</sup>

With these statements in mind, the Chair formulated the original phrasing of the “right to life” article, stated above. The Chair’s draft served as a guidance text for the Working Group.<sup>61</sup> Though it is unclear what influence the pre-Working Group statements on the “right to life” article had on the Chair, it is clear that the Chair’s draft contains the same wording as that put forth by the Regional Workshop held in Bangkok.<sup>62</sup> This may mean that the Chair interpreted the Bangkok Workshop’s draft text to be inclusive of all the concerns raised prior to the Working Group. However, what influence each of the pre-Working Group parties had remains unclear. In any case, prior to the Working Group, the Chair’s draft was the text of the “right to life” article.

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55. Contribution by European Disability Forum (May 2003), <http://www.un.org/esa/socdev/enable/rights/contrib-edfvision.htm>.

56. NGO Contributions to the Elements of a Convention, *supra* note 54.

57. *Id.*

58. World Blind Union, Manifesto for a United Nations Convention on the Rights of People with Disabilities 4 (Feb. 2003), [http://www.un.org/esa/socdev/enable/rights/03-04-09-2\\_Blind\\_Union\\_Manifesto.pdf](http://www.un.org/esa/socdev/enable/rights/03-04-09-2_Blind_Union_Manifesto.pdf).

59. Coalition of Individuals, Organisations and Agencies of the People, for the People and by the People with Disabilities in Eastern Europe (Ukraine, Russia, Belarus, Moldova and Poland) 3, <http://www.un.org/esa/socdev/enable/rights/wg-easteurop.doc> (last visited Feb. 9, 2009).

60. New Zealand’s View of a Convention on the Rights of Disabled People 5 (Nov. 28, 2003), [http://www.un.org/esa/socdev/enable/rights/NewZealand-WGcontrib\\_v1.DOC](http://www.un.org/esa/socdev/enable/rights/NewZealand-WGcontrib_v1.DOC).

61. Working Group Compilations, <http://www.un.org/esa/socdev/enable/rights/comp-element0.htm> (last visited Feb. 9, 2009).

62. See *supra* Part III.A.

C. *Comparing the Pre-Working Group and Working Group Drafts*

By the end of the Working Group session, Article 8 contained the “right to life”: “States Parties reaffirm the inherent right to life of all persons with disabilities, and shall take all necessary measures to ensure its effective enjoyment by them.”<sup>63</sup> The pre-Working Group language was, “Every person with disability has the inherent right to life and survival. This right shall be protected by law. No one shall be arbitrarily deprived of his or her life.”<sup>64</sup>

Because the UN Negotiation Archives do not have further records or daily summaries of the Bangkok Regional Workshop, it is difficult to determine the particular meaning of the “inherent right to life,”<sup>65</sup> especially when the following sentence of the article states that “[n]o one shall be *arbitrarily* deprived of his or her life.”<sup>66</sup> In a plain language analysis, the use of the word “arbitrarily” suggests some subjectivity in whether or not all life will be allowed to proceed from conception. “Arbitrarily” could be interpreted as meaning that terminating some life is justifiable, so long as the terminations are well reasoned. But, without records of debate or reasoning, it is just as likely that “arbitrarily” could have been a word used to describe all instances of abortion. However, this notion lends itself to the question of why the Workshop did not expressly say that abortion to eliminate disability is at all times a violation of the “inherent right to life.”<sup>67</sup> The language established by the Working Group after working with the Bangkok/Chair draft removes any interpretive difficulty with the word “arbitrarily” by eliminating it from the article.

A second look at the Working Group’s final language reveals that the Working Group kept the “inherent right to life” originally put forth in the Bangkok/Chair draft of the “right to life” article.<sup>68</sup> One important word to note in both the pre and post Working text is “person.” It is important to note that neither of these texts considered the “human being” or “human life” with a disability. Rather, an “inherent right to life” is recognized in reference only to “persons.” Common conversation over the issue of abortion often reveals that a serious point of contention is whether there is a significant ethical difference between a “human

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63. U.N. Doc. A/AC.265/2004/WG.1, *supra* note 38, at 14.

64. Compilation of Proposals for Elements of a Convention, <http://www.un.org/esa/socdev/enable/rights/comp-element6.htm> (last visited Feb. 9, 2009).

65. *Id.*

66. *Id.* (emphasis added).

67. *Id.*

68. Compare *id.* (containing the Bangkok Draft), with U.N. Doc. A/AC.265/2004/WG.1, *supra* note 38, at 14 (the Working Group draft).

life”/“human being” and a “person.”<sup>69</sup> Whether this terminology makes a difference in the CRPD is an issue to keep in mind.

One last choice of wording that is noticeable upon a critical reading of the Working Group’s language is the phrase “effective enjoyment.” Does this language assume that life is inherently joyful despite any amount of suffering? Or, does “enjoyment” act as a qualifier for having a life of value? Again, records of discussion of this phrase are lacking in the UN Archive, and it is thus uncertain if this language is meant to be clearly neutral.

#### *D. The Third Session*

During the Third Session of the Ad Hoc Committee, various countries and organizations took issue with the language of the “right to life” article as it stood at that time.<sup>70</sup> In general, parties that were unsatisfied with the original wording of the article desired a “right to life” article more heavily weighted against allowing abortion on the basis of suspected disabilities. However, this desire was not universal.

Costa Rica restated the “right to life” article as such: “States Parties reaffirm the inherent right to life of all persons and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities.”<sup>71</sup> This formulation was meant to show Costa Rica’s belief that “[t]he existing draft article may create a distinction that is not there; everyone has same rights [sic] and obligations, not just PWD.”<sup>72</sup> Costa Rica’s formulation would remove what it saw as a qualifier (the “right to life of all persons *with disabilities*”<sup>73</sup>), replacing it with what might be called the more universal guarantee of a right to life for “all persons.” It is interesting, however, that in taking away what was viewed as a qualifier from the beginning of the Working Group’s article, Costa Rica maintained a qualifier at the end of the article, limiting the guarantee of “effective enjoyment” to “persons with disabilities,”<sup>74</sup> just as the Working Group’s version of the article had limited “effective

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69. See generally BARRY R. FURROW, ET AL., *BIOETHICS: HEALTH CARE LAW AND ETHICS* 24-25 (Thomson West Sixth ed. 2008) (explaining briefly the difference between a “human life”/“human being” and “person”).

70. See Daily Summary at the Third Session of the Ad Hoc Committee Article 8, <http://www.un.org/esa/socdev/enable/rights/ahc3sum8.htm> (last visited Feb. 9, 2009).

71. *Id.*

72. *Id.*

73. U.N. Doc. A/AC.265/2004/WG.1, *supra* note 38, at 14.

74. Daily Summary at the Third Session of the Ad Hoc Committee Article 8, *supra* note 70.



enjoyment” to “them,” meaning “persons with disabilities.”<sup>75</sup> This may be insignificant, but it is an interesting editorial occurrence at least.<sup>76</sup>

China, where population played a key role in its view of Article 8, submitted:

China stated that the right to life by PWD is protected and respected which means those who have been born and living on this earth. In order to control its population and relieve burdens on its society, China practices family planning. This policy protects PWD. China questioned the necessity of including this Article in the Convention.<sup>77</sup>

One of China’s concerns with the “right to life” article appears to be whether the article would affect the availability of abortion in a country with an enormous population and already restrictive measures on parents. What also seems clear in China’s submission is its belief that protection for persons with disabilities is achieved when the focus is on “those who have been born.”<sup>78</sup> The “living on this earth”<sup>79</sup> language does not seem to extend to pre-birth beings/persons when taken in the context of the entire statement. China’s statement also leads to the question: If China signs the Convention, is it conceding that the Convention is “pro-life” because it failed to have the “right to life” article stricken from the Convention? It is doubtful that China would yield on this interpretation, meaning that a signature of China could potentially void a “pro-life” reading of the “right to life” article.<sup>80</sup>

On the other hand, the Holy See submitted:

The Holy See attaches great importance to this article and its role in this Convention. Although the Right to Life is recognized in other instruments, PWD are a specific group with specific issues. The voices of PWD should be heard in this, because of their lived experiences related to the denial of this right.<sup>81</sup>

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75. U.N. Doc. A/AC.265/2004/WG.1, *supra* note 38, at 14.

76. Although it does not seem significant to the overall meaning of the “right to life” article, it should be noted that Costa Rica subsequently withdrew part of its original submission during the May 26 morning session. Daily Summary at the Third Session of the Ad Hoc Committee Article 8, *supra* note 70.

77. *Id.*

78. *Id.*

79. *Id.*

80. China signed the CRPD in March of 2007 and ratified the CRPD in August of 2008. Countries and Regional Integration Organizations, *supra* note 6.

81. Daily Summary at the Third Session of the Ad Hoc Committee Article 8, *supra* note 70.

Here, the Holy See advocated listening to persons with disabilities and letting their concerns drive the “right to life” article.<sup>82</sup>

On the NGO front, NACLC, People with Disabilities Australia Incorporated, and Australian Federation of Disability Organizations urged that language be included in the article that would require signees to actively discourage abortion for reason of avoiding children with disabilities.<sup>83</sup> These groups would also require signees to support parents who have children with disabilities with equal social assistance as well as medical treatment to keep persons with disabilities alive.<sup>84</sup> Additionally, these groups voiced a concern that “genetic engineering presents a fundamental eugenic threat to many impairment groups.”<sup>85</sup>

Inclusion International matched this concern with genetic engineering, “noting that PWD are a part of human diversity and bring unique contributions through their disability. ‘Don’t prevent us, include us.’”<sup>86</sup> Likewise, the World Federation of the DeafBlind wished to include the statement “Disability must not become a justification for determination of life.”<sup>87</sup>

The Third Session documents provide more insight into the complexity of the “right to life” article and the issue of abortion. Though nothing was conclusive in this first meeting after the Working Group, divisions amongst delegations seemed to become more evident. Looking at the concerns of what might be called “pro-choice” China and the “pro-life” delegates and NGOs, it is difficult to envision these early positions being reconciled into a clear cut position for the CRPD.

#### *E. The Fourth and Fifth Sessions*

There was more limited discussion of the “right to life” article during the Fourth and Fifth Sessions, especially in regard to abortion. However, there were still several notable proposals, several of which came from NGOs and concerned pre-natal testing.

The NGO People with Disability Australia was concerned with pre-natal testing used to selectively abort unborn children with disabilities.<sup>88</sup>

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82. However, as discussed above, the disability rights community is not of a single opinion. *See supra* Part II.C.

83. Daily Summary at the Third Session of the Ad Hoc Committee Article 8, *supra* note 70.

84. *Id.*

85. *Id.*

86. *Id.* The Canadian Association of Living was likewise concerned that advances in genetics could lead to discrimination against persons with disabilities. *Id.*

87. *Id.*

88. Article 8 Fourth Session Comments, Proposals and Amendments Submitted Electronically, <http://www.un.org/esa/socdev/enable/rights/ahcstata10fscomments.htm> (last visited Feb. 9, 2009).

While desiring to regulate this practice, People with Disability Australia recognized that this could infringe on women's ability to determine whether or not to have abortions and suggested indirect measures of regulation, rather than a direct ban on abortion in these cases.<sup>89</sup> Specifically, the organization proposed that states act to reduce "overwhelmingly negative and inaccurate" genetic test results and also act against government and private parties' denial of benefits based on pre-natal testing.<sup>90</sup>

The Working Meeting of NGOs for Persons with Disability from Ukraine, Russia, Belarus & Moldova agreed that governments should not deny benefits to families who choose to give birth to a child that is diagnosed with a disability using pre-natal testing.<sup>91</sup> Additionally, the Children's Rights Alliance for England proposed that the article be amended so that laws concerning the unborn are required to be "based on equal respect for human life."<sup>92</sup>

New Zealand cautioned against inclusion in the "right to life" article of language that would apply to unborn children.<sup>93</sup> New Zealand's delegation felt that such language would create unnecessary controversy.<sup>94</sup> India and Canada joined New Zealand on this point.<sup>95</sup> Chile, on the other hand, supported the introduction of language that would cover persons with disabilities in "various stages" of life.<sup>96</sup> Canada objected to this measure.<sup>97</sup>

The International Disability Caucus, while remaining neutral on non-compulsory abortion, expressed its opposition to compulsory abortion.<sup>98</sup> However, the International Disability Caucus also supported amending the "right to life" article to include coverage for persons with disabilities in "all stages of life."<sup>99</sup> Additionally, the International

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89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. Fourth Session Summary of Discussions on Draft Article 8 Right to Life, <http://www.un.org/esa/socdev/enable/rights/ahc4sumart08.htm> (last visited Feb. 9, 2009).

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.* See also *Updated Contribution on the Draft Text of a Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities* 3 (Int'l Disability Caucus, Working Paper Ver. 23 Jan. 2005) [IDC Working Paper], available at <http://www.un.org/esa/socdev/enable/rights/ahc5docs/ahc5idcaucus.doc> (stating the International Disability Caucus draft of the "right to life" article).

99. IDC Working Paper, *supra* note 98, at 3 (stating the International Disability Caucus draft of the "right to life" article). The World Federation of the DeafBlind put forth similar proposals during the Third Session. Article 8 Third Session Comments,

Disability Caucus proposed adding a section to the article stating, "Disability is not a justification for the termination of life."<sup>100</sup> What is unclear, however, is whether the protection for "all stages of life" included the unborn. The records are not much help on this issue. What is more confusing is that Canada objected to the use of this phrase by Chile but not by the International Disability Caucus.<sup>101</sup> It seems likely that this phrase could be construed to include the unborn, regardless of any proclamation to the contrary by the International Disability Caucus. Thus, it would appear that Canada's objection to Chile's proposal would extend to that of the International Disability Caucus, regardless of whether they actually meant for the phrase "all stages of life" to hold the same meaning as that given it by Chile.

During the Fifth Session, both El Salvador and the Holy See proposed that the "right to life" article specifically state that the "right to life" begins at conception.<sup>102</sup> The NGO National Right to Life joined these delegations in calling for protection beginning at conception.<sup>103</sup> Another organization, the Center of Pediatric Services for Persons with Disabilities and Foundation Telethon, Mexico, also stated that the "right to life" begins at conception.<sup>104</sup>

Despite being raised by several delegations during the Fourth and Fifth Sessions of the Ad Hoc Committee, the abortion debate resulted in no changes to the language of the "right to life" article. However, the language of the article did change for other reasons. During the Fourth Session, New Zealand recommended that the phrase "on an equal basis with others" be inserted at the end of the "right to life" article to avoid the implication that persons with disabilities would be favoured over persons without disabilities when states are required to "take all necessary measures" to ensure effective enjoyment of life.<sup>105</sup> Thus, by the end of the Fifth Session, the draft of the "right to life" article read,

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Proposals and Amendments Submitted Electronically, <http://www.un.org/esa/socdev/enable/rights/ahcstata10tscomments.htm> (last visited Feb. 9, 2009).

100. IDC Working Paper, *supra* note 98, at 3.

101. Fourth Session Summary of Discussions on Draft Article 8, *supra* note 93.

102. Fifth Ad Hoc Committee Daily Summaries (January 24, 2005) 10, <http://www.un.org/esa/socdev/enable/rights/ahc5docs/ahc5sum24jan.doc> (last visited Feb. 9, 2009) (El Salvador); Fifth Ad Hoc Committee Daily Summaries (January 25, 2005) 1, <http://www.un.org/esa/socdev/enable/rights/ahc5docs/ahc5sum25jan.doc> (last visited Feb. 9, 2009) (Holy See).

103. Fifth Ad Hoc Committee Daily Summaries (January 27, 2005) 10, <http://www.un.org/esa/socdev/enable/rights/ahc5docs/ahc5sum27jan.doc> (last visited Feb. 9, 2009).

104. *Id.* at 11.

105. Fourth Session Summary of Discussions on Draft Article 8, *supra* note 93. New Zealand's addition of language was well received. Fifth Ad Hoc Committee Daily Summaries (January 25, 2005), *supra* note 102, at 1-2.

"States parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others."<sup>106</sup>

Another noticeable change in the draft article's language is the use of the term "human being" rather than "person" in the beginning of the sentence. However, this change does not seem significant from a bioethical or political perspective. Rather, the term "human being" was proposed by the article coordinator so that the language here would match that of the ICCPR (International Covenant on Civil and Political Rights).<sup>107</sup> This modification was unopposed and did not result in any debate.<sup>108</sup> For these reasons, it seems as though the terms "human being" and "person" were regarded as synonymous by the delegations, despite whatever philosophical meaning otherwise associated with the terms.<sup>109</sup>

#### *F. The Seventh Session*<sup>110</sup>

During the Seventh Session, the International Disability Caucus again called for language that would make the "right to life" article applicable to humans "in all stages of life."<sup>111</sup> India, concerned that this phrase would result in endless debate on whether to include the unborn in the "right to life" article, proposed that the text from the Fifth Session be adopted without amendment.<sup>112</sup> Costa Rica supported the International Disability Caucus' position but stated that, in the interest of time, it would accept the draft as it was.<sup>113</sup> The U.S., Chile, the Syrian Arab

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106. U.N. GAOR, Ad Hoc Comm. on a Comprehensive & Integral Int'l Convention on the Prot. & Promotion of the Rights & Dignity of Persons with Disabilities, *Report of the Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities on Its Fifth Session*, 25, U.N. Doc. A/AC.265/2005/2 (Feb. 23, 2005). It was at this time that the footnotes from the Working Group's draft were dropped from the "right to life" article. *Id.*

107. Fifth Ad Hoc Committee Daily Summaries (January 25, 2005), *supra* note 102, at 2.

108. *Id.*

109. Note, however, that the Council of Europe did request that "persons" replace "human being" in the "right to life" article to avoid the issue of when life begins. Council of Europe, *Drafting Proposals and Comments by the Council of Europe Secretariat* 3 (Apr. 21, 2006), <http://www.un.org/esa/socdev/enable/rights/ahc8docs/ahc8eucouncil.doc>.

110. Because it did not address the "right to life" article in a manner pertinent to the topic of this comment, the Sixth Session of the Ad Hoc Committee is not addressed here.

111. Article 8 Seventh Session Comments, Proposals and Amendments Submitted Electronically, <http://www.un.org/esa/socdev/enable/rights/ahcstata10sevscomments.htm> (last visited Feb. 10, 2009).

112. *Id.*

113. Daily Summary of Discussion at the Seventh Session (17 January 2006) 12, <http://www.un.org/esa/socdev/enable/rights/ahc7docs/ahc7sum17jan.doc> (last visited Feb. 10, 2009).

Republic, and the Holy See all stated that they would support including the language “in all stages of life.”<sup>114</sup> Japan expressed reluctance to support a measure that would protect the unborn.<sup>115</sup>

It is difficult to determine after the Seventh Session, just as it was after the Fifth Session, whether “in all stages of life” was meant to include the unborn. Both the U.S. and Yemen noted that the language “inherent right to life,” which was already in the article, included the concept of protection for humans “in all stages of life.”<sup>116</sup> In light of the parties’ different views on abortion, it seems unlikely that the phrase “inherent right to life” would have made it into the draft article if it infringed in any way on the ability of women to seek abortions, especially given the strong opposition to the phrase “in all stages of life” for the same reason. Thus, proposing that “in all stages of life” is implicit in the phrase “inherent right to life” can be regarded either as wishful thinking to incorporate into the article a “pro-life” position that is not there or as a controversial way of phrasing the less politically charged idea that coverage should be as broad as possible without getting into the abortion issue. In any case, the International Disability Caucus stated that its proposed inclusion of “all stages of life” was meant to emphasize coverage of persons with disabilities of all ages, not to cause debate over abortion.<sup>117</sup> But, more debate could have provided a clearer picture of what all parties intended the proposed language to mean.

#### IV. CONCLUSION

The Final Report of the Ad Hoc Committee, written during the Eighth Session, gives the final version of Article 10 of the Convention on the Rights of Persons with Disabilities, Right to Life: “States Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.”<sup>118</sup> This is identical to the wording used by the time the Fifth Session concluded.<sup>119</sup>

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114. *Id.* at 12.

115. *Id.*

116. *Id.*

117. *Id.* at 13.

118. U.N. GAOR, Ad Hoc Comm. on a Comprehensive & Integral Int’l Convention on the Prot. & Promotion of the Rights & Dignity of Persons with Disabilities, *Final Report of the Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities*, 12, U.N. Doc. A/61/611 (Dec. 6, 2006).

119. During the Eighth Session of the Ad Hoc Committee, an alternate version of the “right to life” article was included as a note in the Drafting Group’s second revised text. This version read, “Everyone has the inherent right to life. States Parties shall take all necessary measures to ensure the effective enjoyment of the right to life of persons with

Looking back over the legislative history of the “right to life” article, several questions raised earlier in this comment can be answered. For one, though Article 25, Health, received more attention at the adoption of the draft articles by the General Assembly, the “right to life” article was the recipient of much debate itself.

Second, it seems that, whenever one party got close to the issue of abortion, another party would make sure that the article stayed politically neutral and sufficiently generalized. Arguments regarding population, choice, religion, and the possibility of abortion being used to discriminate against persons with disabilities were factors that ended in a balancing of the two sides of the international abortion debate and a failure to reach consensus on the issue of abortion. Thus, as it is used in the CRPD, the phrase “right to life” cannot be held to be inherently “pro-life” or “pro-choice.”

This neutrality seems contrary to the Holy See’s reading of Article 10; the Holy See reads Article 10’s protection of the “inherent right to life of every human being” as a prohibition of abortion.<sup>120</sup> This selective reading of the article fails to acknowledge that the article is a compromise. The legislative history shows that nothing in the “right to life” article suggests that it requires a ban on abortion in general or a ban on the abortion of unborn children with disabilities. Nor does the “right to life” article require that a member be “pro-choice.” There is nothing in the “right to life” article that would prevent a state that has ratified the CRPD from banning abortion for all its citizens. For this reason, it is possible that a signatory could enforce a ban on abortion, but this would not reflect the generalized nature of the “right to life” article.<sup>121</sup>

Despite Article 10’s non-position on abortion in the CRPD, the article does not reconcile the fact that it is impossible to use the phrase “right to life” in today’s society without invoking the issue of abortion. While society continues to debate whether a “right to life” represents quality or quantity of lives, the phrase will remain a controversial term of art.

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disabilities on an equal basis with others.” Draft Convention on the Rights of Persons with Disabilities and Draft Optional Protocol 41 (Oct. 3, 2006), <http://www.un.org/esa/socdev/enable/documents/ahc8docs/secrevtxt3oct.doc>. It seems this alternative phrasing was merely a suggestion as to the form of the article, not its underlying meaning. *Id.* at 41 n.90.

120. *See supra* Part II.B.

121. However, this does not mean that such a ban would not encounter problems elsewhere in the CRPD, Article 25 for instance. *See supra* Part II.B.

A press briefing on February 4, 2005,<sup>122</sup> the final day of the Fifth Session, speaks to the controversy surrounding the “right to life.” The briefing was held by the Chairman of the drafting Committee, Luis Gallegos Chiriboga, and New Zealand Representative Don MacKay to discuss the progress of the draft articles.<sup>123</sup> The written record of the briefing states, in regards to abortion, “The discussion was not yet resolved, and it would be one of the most difficult issues.”<sup>124</sup> However, as the history of the article shows, no modifications were made to the language after the Fifth Session; the article remained unchanged after the Fifth Session’s language was adopted.

As the records show, delegates offered additional introductions of language, but these recommendations resulted in stalemate, if a stalemate could even be determined. The debate during the Seventh Session, which concerned whether to add the phrase “in all stages of life” to the “right to life” article, is telltale. The phrase was as politically charged as it was open to interpretation. It is still unclear from the records what purpose this language would have served. And if it was to serve no purpose, then why was it suggested as a possible amendment?

Ultimately, the “right to life” article does not express any opinion on abortion. It simply reflects the uncertainty and compromise of society as a whole. Though this means that the “right to life” article fails to give a precise definition of the “right to life” and what such a right means for abortion, the complexity of the phrase’s history within the CRPD urges us to hesitate before grounding practice in assumptions on the meanings of terms of art.

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122. Press Conference on Convention Protecting Rights of Persons with Disabilities (Feb. 4, 2005), [http://www.un.org/News/briefings/docs/2005/Disabilities\\_Press\\_Cfc\\_050204.doc.htm](http://www.un.org/News/briefings/docs/2005/Disabilities_Press_Cfc_050204.doc.htm).

123. *Id.*

124. *Id.*



